

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8150 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAVI GHAMANDISINH PARIHAAR

Versus

STATE OF GUJARAT

Appearance:

Mr.Anil Verma for

MR MM TIRMIZI for Petitioner

Ms.Harsha Devani, learned A.G.P. for respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/10/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 15.5.2000 passed by the Police Commissioner, Ahmedabad City whereby the petitioner was detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 as

a bootlegger. The petitioner is said to be detained at Surat District Jail, Surat.

No reply to the petition has been filed.

The grounds in support of the detention order show that a case under Bombay Prohibition Act was registered against the petitioner on 1.5.2000 and 480 Lits. of country liquor was found. The case was under investigation at the time when the detention order was passed. Aforesaid solitary criminal case was registered against the petitioner.

Besides the aforesaid criminal case under Prohibition Act, the detaining authority has referred to the incidents dated 5.5.2000 and 25.4.2000, about which 2 witnesses have deposed about petitioner's bootlegging and anti social activities. On that basis the detaining authority has found the petitioner to be a bootlegger and that country liquor being injurious to the public health, there was no alternative but to detain the petitioner so as to prevent him from continuing his anti social activities. On the basis of the solitary criminal case, as aforesaid, and by a bald mention that country liquor is injurious to the public health it cannot be said that it was case of breach of public order. The petitioner's activities as a bootlegger can at the most constitute a case of breach of law and order. In absence of any cogent and credible material with regard to petitioner's activities being injurious to public health, even with reference to Kanuji S.Zala's case, reported in 1999 (2) GLH 415, it cannot be said that the petitioner's activities are real threat to the public order.

So far as the statements of two witnesses with regard to the incidents dated 5.5.2000 and 25.4.2000 are concerned, it is not in dispute that statements with regard to these incidents were recorded on 12.5.2000 and 13.5.2000, the detaining authority has verified the same on 14.5.2000 and on the next day i.e. 15.5.2000 the detention order was passed. The detaining authority has invoked Sec.9(2) of the Act for non disclosure of the identity of the witnesses. Learned counsel for the petitioner has cited an unreported decision dated 6.10.2000 in Special Civil Application No.8546/2000 wherein the earlier decision of this court rendered in the case of Kalidas Chandubhai Kahar v. State of Gujarat, reported in 1993(2) GLR 1659 was considered, wherein it was held that the detaining authority's satisfaction stands vitiated and that it was a case of wrong exercise of power under S.9(2) of the Act. In this

view of the matter, it is found that in the facts of this case also, wrong exercise of power under S.9(2) of the Act is clear.

For the reasons, as aforesaid, the impugned detention order dated 15.5.2000 passed by the Police Commissioner, Ahmedabad City cannot be sustained in the eye of law and the same is hereby quashed and set aside. The respondents are directed to release the petitioner Ravi Ghamandisinh Parihar forthwith from the Surat District Jail, Surat where he is detained since 15.5.2000, in case he is not required to be detained in any other matter. This Special Civil Application is allowed. Rule is made absolute.

(M.R.Calla,J)